

DEPARTMENT OF STATE REVENUE

04-20160562R.ODR

**Final Order Denying Refund: 04-20160562R
Gross Retail Tax
For the Year 2016**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Individual was subject to Indiana sales tax on the purchase of a vehicle as Individual purchased and took possession of the vehicle in Indiana.

ISSUE

I. Gross Retail Tax - Indiana Vehicle Sales.

Authority: IC § 6-2.5-2-1; IC §6-2.5-2-3(b); IC § 6-2.5-13-1; [45 IAC 2.2-3-5](#)(c); Sales Tax Information Bulletin 28S (April 2012).

Taxpayer protests the denial of refund of gross retail tax.

STATEMENT OF FACTS

Taxpayer is a resident of Arkansas. On January 16, 2016, Taxpayer purchased a used car from a dealership located in Indiana ("Dealership"). Indiana sales tax was calculated on the purchase at the Arkansas vehicle sales tax rate and included in the total purchase price on the Dealership's retail order form. This same amount was reported on the Dealership's Indiana Form ST-108NR.

In March 2016, Taxpayer titled and registered the car in Arkansas. Arkansas charged Taxpayer Arkansas sales tax at the time of registration.

Taxpayer filed a Claim for Refund with the Indiana Department of Revenue ("Department") on April 8, 2016 for the Indiana sales tax he paid on the purchase of the vehicle. The Department denied Taxpayer's claim for refund. Taxpayer timely protested the refund denial and an administrative hearing was held. This Order results. Additional facts will be provided as necessary.

I. Gross Retail Tax - Indiana Vehicle Sales.

DISCUSSION

Taxpayer argues that because he paid sales tax in Indiana and Arkansas on the same transaction, he should be refunded the sales tax he paid in Indiana. In denying Taxpayer's refund claim the Department stated:

Regarding sales of vehicles to individuals that intend to title and register the vehicle for use in another state: the Indiana sales tax rate imposed on such a transaction is the state-level sales tax rate of the state where the vehicle will be titled and registered. Please be advised: Department documents indicate the state of Arkansas has a sales tax rate of 6.5 [percent]. Paperwork submitted with the claim indicates the taxpayer paid sales tax at 6.5[percent].

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 et seq. The person who acquires tangible personal property in a retail transaction is liable for the tax on the transaction. IC § 6-2.5-2-1(b). Generally, the sale of any motor vehicle is subject to Indiana sales and use tax unless such transaction is entitled to a statutory exemption. Indiana Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA ("Sales Tax Information Bulletin 28S"). "Absent a statutory exemption, all sales of motor vehicles . . . purchased in Indiana are subject to Indiana sales and use tax. **This includes sales where the purchaser intends to immediately register, license, and/or title the motor vehicle . . . for use in another state.**" Id. "If the vehicle is purchased from a registered Indiana motor vehicle dealer, the dealer must collect the tax and provide the purchaser a

completed form ST-108 showing that the tax has been paid to [the dealer]." [45 IAC 2.2-3-5\(c\)](#). If the purchaser intends to transport the vehicle outside of Indiana within thirty days after delivery and will title or register that vehicle in another state or country, the tax collected should be calculated using the rate of that state. IC § 6-2.5-2-3(b).

A non-resident purchaser may be exempt from Indiana sales tax if the sale is sourced outside of Indiana. This is commonly referred to as the interstate commerce exemption. Sales Tax Information Bulletin 28S. "To qualify as being 'sold in interstate commerce,' the vehicle . . . must be physically delivered, by the selling dealer to a delivery point outside Indiana." Id. "The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle . . . in Indiana. . . ." Id.

In this case, Taxpayer purchased and took possession of the vehicle at the Dealership. "When [a] product is received by the purchaser at a business location of the seller, the sale is sourced to that business location." IC § 6-2.5-13-1(d)(1). Because the Dealership is located in Indiana, the purchase is sourced to Indiana and does not qualify for the interstate commerce exemption. As such, Taxpayer properly paid Indiana sales tax at the time of the purchase. The Dealership properly provided Taxpayer with a Form ST-108NR showing that Taxpayer paid sales tax at the time of purchase. When Taxpayer registered the vehicle with the Arkansas DMV he provided the Form ST-108NR.

Since Taxpayer took possession of the vehicle in Indiana, the sale was completed in Indiana. Thus, Indiana sales tax was properly collected on the purchase at the Arkansas rate. Nevertheless, the Arkansas DMV charged Taxpayer sales tax on the purchase. Arkansas' refusal to give Taxpayer credit for the tax paid in Indiana does not preclude Indiana from collecting and retaining sales tax in this case. Taxpayer's protest is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

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